

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

August 17, 2010
Sent via facsimile and U.S. Mail

Nicole Hartman, Esquire
Deputy Attorney General
Department of Justice
102 West Water Street
Dover, DE 19901

Louis B. McNatt, Esq.
1228 North King Street
Wilmington, DE 19801

RE: State of Delaware v. James T. Bifferato, III
Cr. A. No.: 0912006371
K10-01-04601

Decision on the State's Motion for Reargument

Dear Ms. Hartman and Mr. McNatt:

On July 13, 2010, this Court granted the defendant's motion to suppress evidence obtained when a police officer ran the license plate number on the defendant's vehicle and discovered that one of the owners, a white male, had a suspended license. The officer observed the driver to be a white male, and as a result, executed a traffic stop to investigate. The defendant was charged with driving while his license was suspended or revoked in violation of 21 *Del. C.* § 2756(a). This Court reasoned that at least one more descriptive characteristic of a driver, in addition to race and gender, such as approximate age or hair color, is necessary to justify an investigatory stop, and suppressed the evidence.

On July 16, 2010, the State filed a motion to reargue this Court's decision granting the defendant's motion to suppress, and provided the Court with a 2008 Superior

Court opinion, *State v. Perry*, Del. Super., Cr. A. No. 0805041047, Graves, J. (Oct. 7, 2008) (Letter Op.), which directly contradicts this Court's ruling. After a careful review of *State v. Perry*, the State's motion is granted.

Under Delaware law, a motion for reargument will be granted if "the Court has overlooked a controlling precedent or legal principle, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision." *Simonton v. Orlov*, 2008 WL 2962015, at *2 (Del. Com. Pl.) (quoting *Kennedy v. Invacare Corp.*, 2006 WL 488590, at *1 (Del. Super.)).

In this case, the Court overlooked the legal principles contained in *State v. Perry*, because the letter opinion was not published, and it was not made available to the Court prior to its ruling on the motion to suppress. In *Perry*, the defendant was stopped after an officer conducted a registration check of the automobile the defendant was driving, and discovered that the registered owner had a suspended license. *Perry*, Cr. A. No. 0805041047, at *1. The Superior Court held that the officer had reasonable articulable suspicion to conduct an investigatory stop, explaining as follows:

I am satisfied that a police officer's knowledge that a motor vehicle's owner has a suspended license is a reasonable, articulable basis for stopping the vehicle to determine if the operator is the owner. This is especially true in circumstances that it is improbable a police officer could make any type of identification due to darkness or tinted windows.

The knowledge of an owner's suspended license sufficiently limits a police officer's discretion to remove that decision from being random. A stop under these circumstances is not an unreasonable intrusion into privacy rights of citizens.

...

In summary, I find that a police officer who knows the registered owner of a vehicle has a suspended license has a reasonable, articulable suspicion to make a traffic stop of that vehicle, unless other factors exist which may rebut the inference or presumption.


Nicole Hartman, Esq.
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The doctrine of *stare decisis* is founded on the need for stability and continuity in the law, as well as respect for court precedent. *Leonard Loventhal Account v. Hilton Hotels Corp.*, 780 A.2d 245, 248 (Del. 2001). Therefore, if the same court or a higher court has previously decided a case with similar or identical facts, the doctrine of *stare decisis* operates to fix that legal result in a pending case. *Id.*

Based on the precedent set forth in *Perry*, absent evidence to the contrary, it is presumed that a privately-owned motor vehicle on the road is being operated by one of its owners. In the instant case, the defendant's vehicle had two owners, one a white male, and the other a female. The officer discovered that the white male who owned the vehicle had a suspended license, and verified that the driver of the vehicle was a white male. Therefore, based on the Superior Court ruling in *Perry*, which this Court is required to follow under the doctrine of *stare decisis*, the officer had reasonable articulable suspicion that the driver of the vehicle was driving with a suspended license. The State's motion is granted and the defendant's motion to suppress evidence is denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent part.

Charles W. Welch, III

CWW:mek